

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: November 23, 2009)

No. 06-227V

UNPUBLISHED

SAEID B. MOJABI and PARIVASH VAHABI,)	
as legal representatives of their minor son,)	
RYAN B. MOJABI,)	
)	Interim Award of
Petitioners,)	Attorneys' Fees and Costs;
)	Reasonable Amount
v.)	Requested to which
)	Respondent Does Not
SECRETARY OF THE DEPARTMENT)	Object
OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

David Terzian, Richmond, VA, for petitioners.

Traci Patton, Department of Justice, Civil Division, Torts Branch, Washington, DC, for respondent.

INTERIM ATTORNEYS' FEES AND ATTORNEYS' COSTS DECISION¹

CAMPBELL-SMITH, Special Master

On March 23, 2006, petitioners, Saeid Mojabi and Parivash Vahabi (petitioners or the Mojabis), as parents of Ryan Mojabi, filed a claim for compensation pursuant to the

¹ Because this document contains a reasoned explanation for the action of the undersigned, the document shall post on the website of the United States Court of Federal Claims in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has fourteen days within which to request the redaction "of any information furnished by that party (1) that is trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of timely objection, the entire document will be made publicly available.

National Vaccine Injury Compensation Program (Vaccine Program or Program).² 42 U.S.C. §§ 300aa-1 to -34 (2006). In their petition, the Mojabis alleged that, as a result of “all the vaccinations administered to him from March 25, 2003 through February 22, 2005, and more specifically, measles-mumps-rubella (‘MMR’) vaccinations administered to him on December 19, 2003 and May 10, 2004,” Ryan has suffered “a severe and debilitating injury to his brain, described as Autism Spectrum Disorder (‘ASD’).” Petition at 1. The Mojabis specifically asserted that Ryan “suffered a Vaccine Table Injury, namely, an encephalopathy” as a result of Ryan’s receipt of the MMR vaccination on December 19, 2003. Id. In the alternative, the Mojabis asserted that “as a cumulative result of his receipt of each and every vaccination between March 25, 2003 and February 22, 2005, Ryan has suffered . . . neuroimmunologically mediated dysfunctions in the form of asthma and ASD.” Id. at 1-2. On October 22, 2009, the undersigned re-issued a redacted ruling on denying petitioners’ encephalopathy claim and transferring petitioners’ autism claim to the omnibus autism proceeding. See October 22, 2009 Ruling on Petitioners’ Encephalopathy Claim and an Order to Transfer Claim to the Omnibus Autism Proceeding.

On November 20, 2009, counsel for both parties in this case jointly filed a Stipulation of Facts Concerning Payment of Interim Attorneys’ Fees and Costs (Stipulation). Petitioner seeks interim fees and costs pursuant to 42 U.S.C. § 300aa-15(e) of the National Childhood Vaccine Injury Act of 1986, as amended (the Vaccine Act), and Rule 13 of the United States Court of Federal Claims Vaccine Rules, and further to the guidance provided in Avera v. Secretary of the Department of Health and Human Services, 515 F.3d 1343 (Fed. Cir. 2008).

Based on the cited authority, petitioners request interim attorneys’ fees and costs in the amount of \$64,073.55. Stipulation at 2. Petitioners also requested an interim award of petitioner’s costs in the amount of \$948.61 pursuant to General Order No. 9. The total interim fees and costs request is \$65,022.16. Id. The requested amount is for attorney fees and costs incurred in the prosecution of petitioners’ case through November 20, 2009. Id.

The parties reflect that petitioners’ submission of a draft application for interim attorneys’ fees and costs resulted in informal discussions whereupon petitioners’ counsel amended his interim request in several respects to address respondent’s counsel’s

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10 et seq. (2006) (Vaccine Act or the Act). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

objections. See id at 1. Consistent with the filed Stipulation of Facts, respondent has no objection to an interim award of attorneys' fees and costs in the requested amount of \$65,022.16. Id. Based on the reasonableness of petitioners' request and on respondent's counsel's lack of objection to petitioners' counsel's interim fees request, the undersigned **GRANTS** the attorneys' fees and costs and petitioners' costs, as outlined in the jointly filed stipulation.

It is the opinion of the undersigned that the circumstances of this case are appropriate for an interim award of petitioners' counsel's fees and costs of \$64,073.55, and petitioners' out-of-pocket expenses of \$948.61. The undersigned determines that there is no just reason to delay the entry of judgment on an award of interim attorneys' fees and costs. Therefore, in the absence of a motion for review filed under Appendix B of the Rules of the United States Court of Federal Claims, the Clerk of the Court shall enter judgment in petitioners' favor for \$65,022.16 in interim attorneys' fees and costs and petitioners out-of-pocket expenses. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Special Master